

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michel H. Malek
Title: SPINE STABILIZATION
SYSTEMS
Appl. No.: 10/722,119
Filing Date: 11/25/2003
Examiner: David C. Comstock
Art Unit: 3733
Confirmation 4839
Number:

RESPONSE TO SPECIES ELECTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner Comstock:

This communication is responsive to the Office Action, dated July 30, 2007, concerning the above-referenced patent application. The one month period for responding to the election requirement is set to expire on August 30, 2007, thus Applicant believes this response to be timely filed.

As a first matter, Applicants representative thanks Examiner Comstock for discussing the pending restriction requirement on August 30, 2007. The reason for the restriction between groups I, II and III was discussed. Examiner Comstock asked that the similarities between purported species I, II, and III be pointed out in this response.

In response to the instant Office Action, imposing a species election requirement on the claims of the above-referenced patent application, Applicant hereby provisionally elects as a stabilizing element species I, as described by FIG. 1, reading on claims 1, 2, 4-25, and 43, without traverse, in part, and with traverse, in part. Applicants do not traverse the species election requirement with regard to groups I, II and III, IV, V, and VI, however Applicants do traverse the species election requirement with regard to the separate characterization of Groups II and III.

The Examiner has identified the purported species based upon the figures, however a review of the Brief Description of the Drawings reveals that some of the purported species are merely different views of the same species. For example, the Examiner has asserted species II and III as being distinct based upon FIGS. 9 and 10. However a review of the description in paragraphs 28 and 29 of the specification, as originally filed, reveals that "FIG. 10 shows a posterior view of the stabilizing element of FIG. 9." Hence, FIGS. 9 and 10 are different views of the same embodiment.

Applicants submit that at least claims 1 and 21 are generic claims encompassing at least purported species I, II and III, and that at least claim 1 is also generic to purported species V. As described in MPEP § 806.04(d), "a generic claim should require no material element additional to those required by the species claims." Here there is no element in claim 1 that is not found in purported species I, II and III, and V. There is also no element in claim 21 that is not found in purported species I, II and III. Therefore, upon allowance of a generic claim, Applicant is entitled to consideration of claims to all of the unelected species that depend therefrom, as provided in 37 C.F.R. § 1.141.

Applicant does not believe any fees are due with this response, however the Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even

entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date August 30, 2007

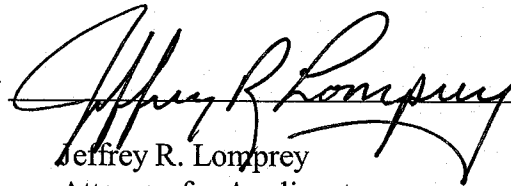
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By



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